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picketing therein involved, seems to repudiate the doctrine that picketing in all forms is inherently unlawful. The language used, however, leaves uncertain where the line is to be drawn between acts constituting lawful, and acts constituting unlawful, picketing. Actual physical violence to person or property is of course unlawful. Similarly, threats of physical violence ought to be held unlawful, whether express, or conveyed by means other than words, as by numbers. Likewise, there is room for disagreement as to persistent, though peaceful, attempts to persuade one who does not desire to be addressed. But mere abusive language, not amounting to threats, or the so-called "moral intimidation" secured by threats of unpopularity and social ostracism, stand upon a different footing. Such acts are not unlawful ordinarily, and no sound policy dictates that they be transformed into torts in the labor field. Finally, picketing consisting merely in the conveying of information, as by single men carrying banners signifying that a certain store is "unfair" etc., can by no stretch of language be made to come within the category of violence or intimidation, and should clearly be held legal. A holding embodying the foregoing principles, together with a decision overruling the doubtful authority of the Patterson case, would go far to complete consistently the liberal system which the earlier California cases have already substantially achieved.²²

H. R.

LIBEL: CONDITIONAL PRIVILEGE: NEWSPAPER PUBLICATIONS CONCERNING PUBLIC OFFICERS—Does a newspaper stand in such a relation to the people of the community in which it is published that publications of false and libellous statements of fact concerning a public officer or candidate for public office are conditionally privileged?¹ The majority view² holds that there is no privilege and

²² For a general summary of recent trends in labor law, see 30 Yale Law Journal, 280, 404, 601, 618, 736. For an extensive summary of the whole field, see note in 6 A. L. R. 909.

¹ It is clear that the courts are agreed that by becoming a public officer, or candidate for public office, one places before the public his character and conduct, so far as they are relevant to his fitness for the office which he holds or seeks, and cannot complain of fair comment and criticism thereon in newspapers. *Schomberg v. Walker* (1901) 132 Cal. 224, 229, 64 Pac. 290; *Hallam v. Post Publishing Co.* (1894) 59 Fed. 530, 8 C. C. A. 201; *Hamilton v. Eno* (1880) 81 N. Y. 116; 25 Cyc. 402, n. 80; L. R. A. 1918E 47; *Odgers, Libel and Slander* (5th ed.), p. 193.

This right to comment upon known facts and upon character is not based upon qualified privilege. Fair comment is never libellous, whereas privilege is immunity from liability for a libel. *Street, Foundations of Legal Liability* 303; *Campbell v. Spottiswoode* (1863) 3 Best and S. 769, 122 Eng. Rep. R. 288; *Merrey v. Guardian Publishing Co.* (1909) 79 N. J. L. 177, 74 Atl. 464; 23 Law Quarterly Review, 97; 24 Law Quarterly Review, 235.

² *Hallam v. Post Publishing Co.* (1894) 59 Fed. 530, 8 C. C. A. 201; *Rearick v. Wilcox* (1876) 81 Ill. 77; *Burt v. Advertiser Newspaper Co.* (1891) 154 Mass. 238, 28 N. E. 1, 13 L. R. A. 97. For other authorities see 25 Cyc. 403, n. 81; Ann. Cas. 1914C 997; *Odgers, Libel and Slander* (5th ed.), 197.

that the only defense to a libel suit against the newspaper is truth. The minority view,³ on the other hand, says that the occasion is privileged when the publication is made without malice, and with reasonable grounds to believe it true.

In California the majority view was established in 1902 by the case of *Jarman v. Rea*⁴ which was followed in 1908 in *Dauphiny v. Buhne*⁵ and *Tanner v. Embree*.⁶ In April of this year, the question was again presented to the Supreme Court in the case of *Snively v. Record Publishing Company*.⁷ From section 45 of the Civil Code⁸ the court found that there are two defenses to a libel suit, namely, truth and privilege. The publication in question was then found to be privileged "in that a newspaper stands in such a relation to the people of the community in which it is published and circulated that, with regard to publications concerning local public officers, it comes within Civil Code section 47(3),⁹ requiring a reasonable ground for supposing the motive for the communication is innocent." Being privileged, proof of truth was not necessary. The court then definitely established the minority view in California by overruling *Jarman v. Rea*¹⁰ and *Dauphiny v. Buhne*¹¹ on the ground that they made truth a necessary element of privilege.

A consideration of this reasoning is proper. As to the code sections, the language is not materially different from the generally accepted common-law rules as to privilege,¹² and, as was pointed out, the majority of courts hold that there is no relation between newspaper and community calling for privilege as to statements made in the former.¹³ This is the real gist of the decisions of *Jarman v. Rea* and *Dauphiny v. Buhne*—not that truth is an

³ *Coleman v. MacLennan* (1908) 78 Kan. 711, 98 Pac. 281, 130 Am. St. Rep. 390, 20 L. R. A. (N. S.) 361; *Mott v. Dawson* (1877) 46 Ia. 533; *Boucher v. Clark Publishing Co.* (1900) 14 S. D. 72, 84 N. W. 237. For other authorities see 25 Cyc. 403, n. 82; Ann. Cas. 1914C 1000.

⁴ (1902) 137 Cal. 339, 70 Pac. 216.

⁵ (1908) 153 Cal. 757, 96 Pac. 880, 126 Am. St. Rep. 136.

⁶ (1908) 9 Cal. App. 481, 99 Pac. 547.

⁷ (April 25, 1921) 61 Cal. Dec. 538, 198 Pac. 1. Rehearing denied May 23, 1921.

⁸ Cal. Civ. Code § 45 reads: "Libel is a false and unprivileged publication," etc.

⁹ Cal. Civ. Code § 47 (3) reads: "A privileged communication is one made: (3) In a communication, without malice, to a person interested therein . . . by one who stands in such a relation to the person interested as to afford a reasonable ground for supposing the motive for the communication innocent . . ."

¹⁰ *Supra*, n. 4.

¹¹ *Supra*, n. 5.

¹² On a similar section in the Washington Code, the court stated that the statute was merely declaratory of the common-law doctrine of qualified privilege. *State v. Sefrit* (1914) 82 Wash. 520, 144 Pac. 725. The North Dakota court on a similar code provision arrived at the conclusion of the principal case. *Egan v. Dotson* (1915) 36 S. D. 459, 155 N. W. 783, Ann. Cas. 1917A 296.

¹³ *Supra*, n. 2.

element of privilege, but that truth is the only defense a newspaper can plead.¹⁴

One cannot, however, quarrel with the holding of the court for, in the last analysis, the doctrine of privilege rests in public policy. The extent and existence of privilege in communications concerning a public officer or candidate are determined by balancing public good against private hurt.¹⁵ The previous California cases favored that policy which protected the individual, whereas, in the Snively case, the court, realizing that by so doing, one man might possibly lose his reputation with the whole public, nevertheless adopted that policy which would secure to the public an absolutely unrestrained discussion of officers and candidates.

From a social standpoint, it is hard to say which is the better. Under the rule of *Jarman v. Rea*, there was possibly a restraint on free discussion of candidates due to fear on the part of newspapers of making mistakes, although one was not greatly impressed with the idea "that statements of fact concerning public men and charges against them were unduly guarded or restrained." Under the rule of the principal case, however, it seems that a veritable immunity bath is given to newspapers. It remains to be seen whether the court has provided a shield from beneath which "newspapers may hurl javelins of false and malicious slander against public officers and candidates with impunity", causing honorable and worthy men to quit the field of public service.

L. L. T.

PROPERTY: APPORTIONMENT AND ACCRETIONS: LANDLORD AND TENANT: WAIVER OF FORFEITURE—Suppose it is necessary to determine the respective rights of owners to a space under or upon the water in front of a shore line, or suppose it is necessary to apportion accretions as between adjoining owners, what is the rule to be adopted? Authorities agree that extension in the same direction of the owners' boundaries is not ordinarily the proper way to apportion such areas. The objection is that such extension is inequitable where the boundaries reach the shore at different angles.¹ And so it is the

¹⁴ Both the cases cite many of the cases in note 1, *supra*, as authority and in them the privilege is denied absolutely. It is true, however, that in one place in *Dauphiny v. Buhne* the court stated that "one can justify the publication of a libel against a candidate for public office upon privilege only by proof that accusation is true", yet the gist of the decision is that there is no relation calling for privilege, and, as a result, the only justification would be truth.

¹⁵ *Hallam v. Post Publishing Co.*, *supra*, n. 1.

¹ *Berry v. Hoogendorn* (1906) 133 Ia. 437, 108 N. W. 923; *Menesha Wooden Ware Co. v. Lawson* (1888) 70 Wis. 600; *Kehr v. Snyder* (1885) 114 Ill. 313, 2 N. E. 68, 55 Am. Rep. 866; *People v. Schermerhorn* (1855) 19 Barb. (N. Y.) 540; *Heirs of Delord v. City of New Orleans* (1856) 11 La. Ann. 699; 3 *Farnham, Waters and Water Rights*, p. 2476.